

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(ORDINARY ORIGINAL ADMIRALTY JURISDICTION)

TUESDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

:PRESENT:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI



IA No. 1 OF 2023

IN

COMS NO: 1 OF 2023

Between:

Oceanic Dolphin Shipping & Logistics Services, a Sole Proprietary Concern, having its principal place of business at Plot No. 14 'A', Ward 9B/D, Opp. Rajasthan Namkeen, Nr. Hotel Empire, Gandhidham, Kutch, Gujarat. Represented by its Sole Proprietor - Mr. Vishal Thapa.

...PLAINTIFF

AND

1. MV MANA (IMO 9748849) A Vessel registered in Liberia with Official Call Sign D5NG2. Presently lying in the territorial Waters of India at Kakinada Port, Kakinada, Andhra Pradesh, and in c/o of A1 Rabih General Trading FZC. P.O. Box 7073, U.A.Q, U.A.E.
2. Kakinada Seaports Limited, a company Incorporated under the provisions of Companies Act, 1956, having its registered address at 1st Floor, D. No. - 54-14/8-36. Plot No. 17, Road No. 2, Bharathi Nagar, Vijayawada, Krishna, Andhra Pradesh - 520008.

...DEFENDANT

Counsel for the Petitioner :SRI SAI SANJAY SURANENI

Counsel for the Respondent :

Petition under Section Order 39 Rule 1 and 2 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, it is prayed that pending the hearing and final disposal of the suit, the Defendant vessel MV MANA (IMO 9748849), together with her hull, tackle, engines, bunkers, equipment, plant, machinery, apparel, fixtures and furniture, be arrested and detained under orders of this Hon'ble Court and/or be restrained from sailing out of the port and harbour of Kakinada port, till security towards the Plaintiff's claim in the suit/other appropriate proceeding is furnished, Pending disposal of COMS No. 1 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

Plaintiff filed the above Commercial Suit seeking the following relief:

a) That the defendant Vessel – MV MANA (IMO No.9748849) along with her hull, engines, tackle, machinery, boats, apparel and other paraphernalia at present lying in the port and harbor of Kakinada Port be ordered to be arrested;

b) That the defendant Vessel – MV MANA (IMO No.9748849) along with her hull, engines, tackle, machinery, boats, apparel and other paraphernalia at present lying in the port and harbor of Kakinada Port be ordered to be detained, condemned, and sold under orders and directions of this Court and the sale proceeds thereof, be applied towards the satisfaction of the plaintiff's claim in the suit, or another appropriate proceeding;

c) For judgment and decree in favour of the plaintiff and against the Defendant Vessel for an aggregate sum of INR 1,01,27,193/- (Indian National Rupees One Crore One Lakh Twenty Seven Thousand One Hundred and Ninety Three only) along with interest @18% p.a. from the date of the institution of the suit till payment/ realization together with costs;

d) Additional costs of the suit may otherwise be provided;

Interlocutory Application was filed under Order XXXIX Rule 1 and 2 of CPC. In the affidavit, it was contended, inter alia, that plaintiff was appointed as "Owners Protective Agent" on 22.04.2022 for the defendant vessel during her call at Deendayal Port between 29.04.2022 to 20.05.2022.

Plaintiff was appointed as 'Owners Protective Agent' by Al Rabih General Trading FZC by sending e-mail dated 21.04.2022.

Plaintiff was also appointed to clean cargo holds and supply cargo hold paints and thinner. Plaintiff was also appointed to provide necessary support to the cargo hold surveyor during the inspection of cargo holds before the commencement of loading operations.

Defendant Vessel arrived at Deendayal Port, outer anchorage on 29.04.2022. On 29.04.2022 and 02.05.2022, plaintiff supplied paint, thinner, cotton rags, scaffolding, aluminum and paint rollers to the defendant vessel for chipping rust and re-painting her cargo holds. Plaintiff also supplied labour and necessary equipment for washing the cargo holds, chipping the rust of cargo holds and re-painting the same. Plaintiff also arranged the transport of labour and equipment from shore to the defendant vessel at outer anchorage. Delivery challans dated 29.04.2022 and 02.05.2022 signed and stamped by Master/Chief Officer are filed as Exhibit-C.

On 29.04.2022 and 02.05.2022, the labour supplied by plaintiff cleaned the cargo holds, chipped the rust, re-painted the holds and made the same fit for receiving Wheat. Plaintiff also provided necessary assistance to inspectors/ surveyors authorized to inspect/survey cargo holds. Plaintiff also arranged the necessary permission from Mercantile Marine Department, Kandla, for commencing loading.

Defendant Vessel berthed on 09.05.2022 under priority group. Loading was commenced on 09.05.2022. Loading operations were suspended briefly on 13.05.2022 as defendant vessel was required to shift to a deep draft berth for further loading. On 17.05.2022, the Directorate General, Foreign Trade, granted permission to the defendant vessel to conclude its cargo operations and sail out from Kandla. Loading operations of defendant vessel were concluded on 19.05.2022 and the same sailed out from Deendayal Port on 20.05.2022.

Plaintiff as protective agent of defendant vessel was liable to make payments of port dues (berth charges, pilotage etc.) to the port authorities. The port authorities issued notice dated 08.10.2022 demanding the plaintiff to make payments. The port authorities issued another notice dated 13.01.2023 to pay outstanding amount of Rs.56,83,169/- against penal berth birth charges within time limit of 15 days. In the notice dated 13.02.2023, it was stated that port authorities may suspend Stevedoring Licence and Cancellation of Stevedoring Authorization will be initiated against the plaintiff. Another notice dated 06.04.2023 was issued to the plaintiff to clear the outstanding amount of Rs.56,83,169/- within seven days.

Since the amount was not paid, plaintiff issued e-mail dated 03.12.2022 to Al Rabih General Trading FZC.

On 05.04.2023, it was communicated to the plaintiff, that Stevedores Shantilal Shipping & Chartering Pvt. Ltd., are liable to clear the dues, but not by Al Rabih General Trading FZC.

Port authorities are demanding the amount from the plaintiff, as the plaintiff has given undertaken, which was filed at Page No.70 of material papers along with COMS No.1 of 2023. Hence, the plaintiff filed the above commercial suit for recovery of dues and for arrest of defendant vessel – MV MANA along with her hull, engines, tackle, machinery, boats, apparel and other paraphernalia at present lying in the port and harbor of Kakinada Port.

As per the vessel schedule filed along with plaint, the defendant vessel is awaiting anchorage.

Heard Sri Sai Sanjay Suraneni learned counsel appearing for the petitioner.

In Videsh Sanchar Nigam Ltd. Vs. M.V.Kapitan Kud and others [(1996) 7 SCC 127], the Apex Court held that the admiralty action is an action in rem.

The material papers filed along with the suit, prima facie would indicate that petitioner was appointed as Owners Protective Agent by Al Rabi General Trading FZC, owner of the 1st respondent vessel. Pursuant to the said appointment, petitioner performed the obligations. In fact, petitioner also gave undertaking of Penal Berth Hire for the Vessel MV MANA. Petitioner also supplied material as indicated supra and extended other services.

Petitioner is claiming Rs.1,01,27,193/- with interest at 18% per annum.

Petitioner, by placing material before the Court, prima facie proved its case qua the interim relief sought for in the I.A.

Considering the nature of the claim as well as the circumstances and factors set out by the petitioner against the 1st respondent, if no facility is available to secure realization of the amounts due as claimed by the petitioner, the petitioner will suffer any amount of hardship and realization of the suit amount even if the suit is decreed, appears to be a distant possibility. In the circumstances, finding justification in the request of the petitioner prima facie, arrest of the 1st respondent shall be ordered.

Issue warrant of arrest against the 1st respondent vessel MV MANA (IMO 9748849) along with her hull, engines, tackle, machinery, boats, apparel and other paraphernalia, at present, lying in the port and harbor of Kakinada Port, in the event of the 1st respondent failing to furnish security for INR 1,01,27,193/- within 48 hours of service of warrant of arrest on the master of the 1st respondent vessel.

Registry is directed to issue this warrant of arrest to be executed through the III Additional District Court, Kakinada. The learned III Additional District Judge, Kakinada shall entrust this warrant of arrest to a Field Assistant nominated for this purpose. The Port authorities of Kakinada Port Trust, namely the 2nd respondent and all the concerned including the master of the 1st respondent vessel shall give access to the Field Assistant of the III Additional District Court, Kakinada for execution of this warrant.

In the event the security as stated above is offered, the 1st respondent vessel is at liberty to sail out of the territorial waters of India.

Learned counsel for the petitioner/plaintiff is permitted to serve a copy of this order on the master of the 1st respondent vessel at Kakinada Port including on the authorities of the 2nd respondent Port as well as forward the same to the 1st respondent by e-mail or fax and file proof of service by 01.05.2023.

//TRUE COPY//

Sd/- S.V.S.R.MURTHY
JOINT REGISTRAR
SECTION OFFICER
SECTION OFFICER

To,

1. The III Additional District Judge, Kakinada **(BY SPEED POST)**
2. The Registrar (Judicial), High Court of Andhra Pradesh, Amaravati
3. MV MANA(IMO 9748849) A Vessel, registered in Liberia with Official Call Sign D5NG2. Presently lying in the territorial Waters of India at Kakinada Port, Kakinada, Andhra Pradesh, and in c/o of Al Rabih General Trading FZC. P.O. Box 7073, U.A.Q, U.A.E.
4. Kakinada Seaports Limited, a company Incorporated under the provisions of Companies Act, 1956, having its registered address at 1st Floor, D. No. - 54-14/8-36. Plot No. 17, Road No. 2, Bharathi Nagar, Vijaywada, Krishna, Andhra Pradesh - 520008.
5. The Port Officer, Kakinada Port Authority, Kakinada, East Godavari District, Andhra Pradesh. **(Addressees 3 to 5 by RPAD)**
6. The Section Officer, O.S. Section, High Court of Andhra Pradesh
7. One CC to SRI. SAI SANJAY SURANENI Advocate [OPUC]
8. One spare copy

PSR

HIGH COURT

SRS,J

DATED:25/04/2023

NOTE: LIST ON 14.06.2023.

ORDER

IA No. 1 OF 2023
IN
COMS NO: 1 OF 2023

DIRECTION



**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(ORDINARY ORIGINAL ADMIRALTY JURISDICTION)
TUESDAY, THE TWENTY FIFTH DAY OF APRIL,**

TWO THOUSAND AND TWENTY THREE

PRESENT:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

I.A. No. 1 of 2023

IN

COM.S. No. 1 of 2023

Between :-

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To

The III Additional District Judge, Kakinada, East Godavari District

And whereas the Court upon perusing petition and the affidavit filed therein, and upon hearing the arguments of Sri SAI SANJAY SURANENI, Advocate for the petitioner, ordered that the first respondent vessel viz., MV MANA (IMO 9748849) A Vessel registered in Liberia with Official Call Sign D5NG2.

Presently lying in the territorial Waters of India at Kakinada Port, Kakinada, Andhra Pradesh, and in c/o of A1 Rabih General Trading FZC. P.O. Box 7073, U.A.Q, U.A.E. under Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act read with Section 11 of the said Act, be arrested and warrant of arrested is directed to be issued;

Therefore you namely,

The III Additional District Judge, Kakinada, East Godavari District

are hereby directed to arrest the 1st respondent vessel viz., MV MANA (IMO 9748849), A Vessel registered in Liberia with OFFICIAL Call Sign D5NG2, presently lying in the territorial Waters of India at Kakinada Port, Kakinada , Andhra Pradesh, and in c/o of A1 Rabih General Trading FZC. P.O. Box 7073, U.A.Q, U.A.E. along with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia and all other appurtenances;

You are informed that the Port Authorities of Kakinada Port Trust, namely the 2nd respondent and all the concerned including the master of the 1st respondent vessel shall give access to the Field Assistant of your Court, for execution of this warrant.

You are also further directed to return this warrant as early as possible preferably before 14.06.2023 to this Court with a detailed report stating the manner in which it has been executed.

Herein fail not.


26/6/23
JOINT REGISTRAR

To

1. The III Additional District Judge, Kakinada, East Godavari District. **(By Speed Post)**
2. MV MANA (IMO 9748849) A Vessel registered in Liberia with Official Call Sign D5NG2. Presently lying in the territorial Waters of India at Kakinada Port, Kakinada, Andhra Pradesh, and in c/o of A1 Rabih General Trading FZC. P.O. Box 7073, U.A.Q, U.A.E **(BY SPEED POST and e-mail along with detailed order And grounds)**
3. One Spare copy
PSR

HIGH COURT

SRS,J

DATED:25.04.2023.

WARRANT

I.A.No.1 of 2023

IN

C.O.M.S. No. 1 of 2023

